

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

UNITED STATES OF AMERICAN and THE STATE OF WISCONSIN)	
)	
Plaintiffs,)	Civil Action No. 10-C-910
)	
v.)	The Honorable William C. Griesbach
)	
NCR CORPORATION, <i>et al.</i>)	
)	
Defendants.)	

**PHASE I PRE-TRIAL STIPULATIONS BETWEEN THE PLAINTIFFS AND
DEFENDANT CBC COATING, INC.**

In anticipation of the upcoming Phase 1 trial in this action, the United States, the State of Wisconsin, and Defendant CBC Coating, Inc. ("CBC") hereby stipulate and agree as follows:

1. Stipulations by CBC. CBC hereby stipulates, agrees, and covenants that the Plaintiffs shall not have to prove, and that CBC shall not contest, the following averments in the above-captioned action:

- a. CBC, formerly known as Riverside Paper Corp., is a person within the ambit of 42 U.S.C. § 9607(a) who owned and operated the Riverside Paper Facility located at 800 S. Lawe St. in Appleton (the "Riverside Facility") at the time of disposal of hazardous substances at the Riverside Facility, from which there have been releases of hazardous substances, i.e., polychlorinated biphenyls, to the Lower Fox River and Green Bay Superfund Site (the "Site"). Releases and threatened releases of such hazardous substances to the Site have caused the incurrence of response costs by the Plaintiffs.

- b. CBC waives all defenses that may be alleged to limit or bar relief against CBC for the Site under the Fifth Claim for Relief in Plaintiffs' First Amended Complaint, including, but not limited to, any defense based on divisibility or apportionment principles, any defense based on alleged actions or inaction by the Plaintiffs, and any and all challenges to the selected remedy for the Site as set forth in the Records of Decisions for the Site; provided, however, that the waiver in this Subparagraph 1.b shall be withdrawn as to any portion of the remedy that is judicially held to be arbitrary and capricious or otherwise not in accordance with law under CERCLA Section 113(j), 42 U.S.C. § 9613(j), as a result of a challenge by another potentially responsible party. CBC does not waive any challenges to any changed remedy for the Site that: (i) is a significant difference or fundamental change from the current selected remedy for the Site; and (ii) increases the cost of the remedy, as compared to the current selected remedy for the Site.

2. Additional Stipulation.

- a. In April 2009, an entity known as the Lower Fox River Remediation LLC (the "LLC") entered into a contract with Tetra Tech EC, Inc. and engaged that firm to take over primary responsibility for performance of all remediation-related services required by the EPA's November 2007 Unilateral Administrative Order for remediation action at the Site (the "UAO"). The LLC was formed solely by NCR, Appleton Papers Inc., and Arjo Wiggins Appleton (Bermuda) Ltd. CBC is not, and has never been, a member of the LLC. CBC also has no independent contractual relationship with Tetra Tech EC, Inc. for the performance of any remedial action work required by the UAO. The Plaintiffs and CBC are informed

and believe that NCR Corporation (“NCR”) currently controls the LLC and the contractor engaged by the LLC.

- b. In a set of rulings in a related CERCLA case captioned *Appleton Papers Inc. v. George A. Whiting Paper Co.*, No. 08-c-16 (E.D. Wis.), the Court has determined that: (i) NCR is not entitled to contribution from CBC for NCR’s response cost and natural resource damage payments concerning the Site; and (ii) CBC is entitled to full contribution from NCR for all of its appropriate costs and damages relating to OUs 2-5, as well as any further costs or damages CBC may be deemed liable for in those portions of the Site. Those rulings are expected to be the subject of an appeal to the Seventh Circuit, but are the law of the case in that matter at the time of this stipulation.
- c. In light of the circumstances and the stipulations set forth above, and in the exercise of its enforcement discretion, the United States will initially seek performance (including an injunction based on the Fifth Claim for Relief), corrective measures, and penalties for noncompliance with the terms of the UAO from NCR and its delegates, and/or from other defendants in this action, and not from CBC. The United States reserves the right to seek injunctive relief against CBC through future proceedings if the United States determines, in the unreviewable exercise of its enforcement discretion, that such relief has become necessary.

IT IS SO STIPULATED.

Phase 1 Pre-Trial Stipulations Between the Plaintiffs and Defendant CBC Coating, Inc. in *United States and the State of Wisconsin v. NCR Corp., et al.*, No. 10-C-910 (E.D. Wis.)

FOR THE UNITED STATES OF AMERICA

IGNACIA S. MORENO

Assistant Attorney General
Environment and Natural Resources Division

Dated: November 29, 2012

s/ *Randall M Stone*

RANDALL M. STONE

JEFFREY A. SPECTOR

KRISTIN FURRIE

SEAN CARMAN

MAYA ABELA

SUMONA MAJUMDAR

Environmental Enforcement Section

Environment and Natural Resources Division

U.S. Department of Justice

P.O. Box 7611

Washington, DC 20044-7611

Telephone: 202-514-1308

Facsimile: 202-616-6584

E-Mail: randall.stone@usdoj.gov

GREGORY J. HAANSTAD

Attorney for the United States, Acting

Under Authority Conferred by 28 U.S.C. § 515

SUSAN M. KNEPEL

Assistant United States Attorney

Office of the United States Attorney

517 E. Wisconsin Avenue, Room 530

Milwaukee, WI 53202

FOR THE STATE OF WISCONSIN

Dated: November 29, 2012

s/ *Cynthia R. Hirsch*

CYNTHIA R. HIRSCH

Assistant Attorney General

Wisconsin Department of Justice

17 West Main Street

P.O. Box 7857

Madison, WI 53707-785

E-Mail: hirschcr@doj.state.wi.us

Phase 1 Pre-Trial Stipulations Between the Plaintiffs and Defendant CBC Coating, Inc. in *United States and the State of Wisconsin v. NCR Corp., et al.*, No. 10-C-910 (E.D. Wis.)

FOR DEFENDANT CBC COATING, INC.

Dated: November 29, 2012

s/ Michael P. Carlton

MICHAEL P. CARLTON

mcarlton@vonbriesen.com

von Briesen & Roper, s.c.

SUSAN E. LOVERN

slovern@vonbriesen.com

411 East Wisconsin Avenue, Suite 1000

Milwaukee, WI 53202

Telephone: 414-276-1122

Facsimile. 414-276-6281

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing Phase 1 Pre-Trial Stipulations to be served on the following counsel of record by the Court's Electronic Case Filing system:

Mary Rose Alexander
Latham & Watkins LLP
mary.rose.alexander@lw.com

Thomas Armstrong
von Briesen & Roper SC
tarmstro@vonbriesen.com

Paul Bargren
Foley & Lardner LLP
pbargren@foley.com

Linda E. Benfield
Foley & Lardner LLP
lbenfield@foley.com

Dennis P. Birke
DeWitt Ross & Stevens SC
db@dewittross.com

Steven P. Bogart
Reinhart Boerner Van Deuren SC
sbogart@reinhartlaw.com

Michael P. Carlton
von Briesen & Roper SC
mcarlton@vonbriesen.com

Evan R. Chesler
Cravath Swaine & Moore LLP
echesler@cravath.com

Francis A. Citera
Greenberg Traurig LLP
citeraf@gtlaw.com

Marc E. Davies
Greenberg Traurig LLP
daviesm@gtlaw.com

David R. Erickson
Shook Hardy & Bacon LLP
derickson@shb.com

S. Todd Farris
Friebert Finerty & St. John SC
stf@ffsj.com

Patrick J. Ferguson
Latham & Watkins LLP
patrick.ferguson@lw.com

Charles Fried
fried@law.harvard.edu

Sandra C. Goldstein
Cravath Swaine & Moore LLP
sgoldstein@cravath.com

Thomas R. Gottshall
Haynsworth Sinkler Boyd PA
lgantt@hsblawfirm.com

Eric W. Ha
Sidley Austin LLP
eha@sidley.com

Scott W. Hansen
Reinhart Boerner Van Deuren SC
shansen@reinhartlaw.com

William H. Harbeck
Quarles & Brady LLP
william.harbeck@quarles.com

Cynthia R. Hirsch
Wisconsin Department of Justice
hirschcr@doj.state.wi.us

Margaret I. Hofer
Stafford Rosenbaum LLP
mhofer@staffordlaw.com

Caleb J. Holmes
Greenberg Traurig LLP
holmesc@gtlaw.com

Philip C. Hunsucker
Hunsucker Goodstein PC
phunsucker@hgnlaw.com

Peter C. Karegeannes
Quarles & Brady LLP
peter.karegeannes@quarles.com

Paul G. Kent
Stafford Rosenbaum LLP
pkent@staffordlaw.com

Gregory A. Krauss
Gregory Krauss pllc
gkrauss@krausspllc.com

Linda R. Larson
Marten Law PLLC
llarson@martenlaw.com

Vanessa A. Lavelly
Cravath Swaine & Moore LLP
vlavelly@cravath.com

Susan E. Lovern
von Briesen & Roper SC
slovern@vonbriesen.com

Anne E. Lynch
Hunsucker Goodstein PC
alynch@hgnlaw.com

Kevin J. Lyons
Davis & Kuelthau SC
klyons@dkattorneys.com

Karl S. Lytz
Latham & Watkins LLP
karl.lytz@lw.com

Meline G. MacCurdy
Marten Law
mmaccurdy@martenlaw.com

David G. Mandelbaum
Greenberg Traurig LLP
mandelbaumd@gtlaw.com

Bradley M. Marten
Marten Law
bmarten@martenlaw.com

Tara M. Mathison
Davis & Kuelthau SC
tmathison@dkattorneys.com

Allison E. McAdam
Hunsucker Goodstein PC
amcadam@hgnlaw.com

Darin P. McAtee
Cravath Swaine & Moore LLP
dmcatee@cravath.com

Stephen F. McKinney
Haynsworth Sinkler Boyd PA
smckinney@hsblawfirm.com

Heidi D. Melzer
Melzer Law, LLC
hmelzer@melzerlaw.com

Elizabeth K. Miles
Davis & Kuelthau SC
emiles@dkattorneys.com

William J. Mulligan
Davis & Kuelthau SC
wmulligan@dkattorneys.com

Daniel C. Murray
Johnson & Bell Ltd.
murrayd@jbltd.com

Omid H. Nasab
Cravath Swaine & Moore LLP
onasab@cravath.com

Kelly J. Noyes
von Briesen & Roper SC
knoyes@vonbriesen.com

Nancy K. Peterson
Quarles & Brady LLP
nancy.peterson@quarles.com

Thomas M. Phillips
Reinhart Boerner Van Deuren SC
tphillip@reinhartlaw.com

Ian A.J. Pitz
Michael Best & Friedrich LLP
iapitz@michaelbest.com

David A. Rabbino
Hunsucker Goodstein PC
drabbino@hgnlaw.com

Ronald R. Ragatz
DeWitt Ross & Stevens SC
rrr@dewittross.com

Kathleen L. Roach
Sidley Austin LLP
kroach@sidley.com

Megan A. Senatori
DeWitt Ross & Stevens SC
ms@dewittross.com

Adam B. Silverman
Greenberg Traurig LLP
silvermana@gtlaw.com

M. Andrew Skierawski
Friebert Finerty & St. John SC
mas@ffsj.com

Sarah A. Slack
Foley & Lardner LLP
sslack@foley.com

Margaret R. Sobota
Sidley Austin LLP
msobota@sidley.com

Arthur A. Vogel, Jr.
Quarles & Brady LLP
arthur.vogel@quarles.com

Anthony S. Wachewicz, III
City of Green Bay
tonywa@ci.green-bay.wi.us

James P. Walsh
Appleton City Attorney
jim.walsh@appleton.org

Ted A. Warpinski
Friebert Finerty & St John SC
taw@ffsj.com

Ted Waskowski
Stafford Rosenbaum LLP
twaskowski@staffordlaw.com

Evan B. Westerfield
Sidley Austin LLP
evanwesterfield@sidley.com

Richard C. Yde
Stafford Rosenbaum LLP
ryde@staffordlaw.com

Dated: November 29, 2012

s/ *Randall M. Stone*